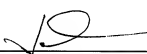
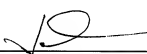
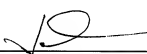


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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) 55994.0121 | | | | | | | |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____ | | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Application Number 10/762,866</td> <td style="padding: 5px;">Filed 22 January 2004</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Kevin J. Turpin</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2167</td> <td style="padding: 5px;">Examiner Susan G. Rayyan</td> </tr> </table> | | Application Number 10/762,866 | Filed 22 January 2004 | First Named Inventor Kevin J. Turpin | | Art Unit 2167 | Examiner Susan G. Rayyan |
| Application Number 10/762,866 | Filed 22 January 2004 | | | | | | | | |
| First Named Inventor Kevin J. Turpin | | | | | | | | | |
| Art Unit 2167 | Examiner Susan G. Rayyan | | | | | | | | |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. (See 37 CFR 3.71, Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 56,561 <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ </td> <td style="width: 50%; vertical-align: top;"> <div style="text-align: center;">  Signature _____ Jonathan R. Lee Typed or printed name _____ (801) 799-5917 Telephone number _____ 12 March 2008 Date _____ </div> </td> </tr> </table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> | | | | <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. (See 37 CFR 3.71, Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 56,561 <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ | <div style="text-align: center;">  Signature _____ Jonathan R. Lee Typed or printed name _____ (801) 799-5917 Telephone number _____ 12 March 2008 Date _____ </div> | | | | |
| <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. (See 37 CFR 3.71, Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 56,561 <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ | <div style="text-align: center;">  Signature _____ Jonathan R. Lee Typed or printed name _____ (801) 799-5917 Telephone number _____ 12 March 2008 Date _____ </div> | | | | | | | | |
| <input checked="" type="checkbox"/> *Total of 2 forms are submitted. | | | | | | | | | |

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**1. Claim Rejections – 35 U.S.C. § 103**

In the final Office Action mailed 12 December 2007, the Examiner rejected claims 1-5, 9-15, 19-25, 31-35, and 39-43 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2004/0083245 to Beeler (“Beeler”) in view of U.S. Patent Publication No. 2002/0087588 to McBride et al. (“McBride”), claims 6-8, 16, 17, 26-30, 36, and 37 as allegedly being unpatentable over Beeler in view of McBride and further in view of U.S. Patent Publication No. 2003/00221076 to Milligan et al. (“Milligan”), and claims 18 and 38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Beeler in view of McBride and further in view of U.S. Patent Publication No. 2002/0095616 to Hastings (“Hastings”). Applicant respectfully traverses these rejections for at least the reasons set forth below.

a. Claims 1-10, 21-30, and 32-42: “Same Partition” Limitations

As explained in Applicant's Response dated 5 February 2008, Beeler and McBride, either alone or in combination, fail to disclose, teach, or suggest backing up or restoring a file system to or from a “locally-stored image file [that] is located within the same partition as the file system,” as is recited in independent claims 1, 21, 41, and 42 of the present application.

For example, while Beeler may teach of replicating primary data 62 as replicated data 63 in FIG. 6, Beeler fails to explicitly teach of storing replicated data 63 within the same partition as primary data 62. Indeed, while Beeler may teach that primary data 62 and replicated data 63 may be stored within “different volumes of the same data storage device,” Beeler fails to explicitly state that these “different volumes” are necessarily located within the same partition. Par. [0079] of Beeler.

In fact, as is well known in the art, volumes (or logical drives) are commonly stored within different partitions, even within a single storage device. The following table provides a common example in a WINDOWS system environment of such a configuration:

TABLE 1

| Storage Device | Partition | File System Format | Volume Label |
|----------------|-------------|--------------------|--------------|
| Hard Disk A | Partition A | NTFS | C: |
| Hard Disk A | Partition B | FAT32 | D: |

Thus, while primary data 62 and replicated data 63 in Beeler may be stored within different volumes within the same storage device (such as Volumes C and D in Hard Disk A in Table 1), these volumes may not necessarily be located within the same partition within this storage device. Indeed, primary data 62 and replicated data 63 may likely be stored within volumes that are located within different partitions within the same storage device, such as Partitions A and B within Hard Disk A in Table 1.

Accordingly, because Beeler fails to explicitly state that replicated data 63 is stored in the same partition as primary data 62, Beeler clearly fails to satisfy the “same partition” limitation recited in the claims. *See, e.g., Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) ([F]or a rejection to be proper, [t]he identical invention must be shown in as complete detail as is contained in the . . . claim.”) (emphasis added). Moreover, since (as explained above) primary data 62 and replicated data 63 in Beeler are not necessarily located within the same partition, Beeler also fails to inherently satisfy the “same partition” limitations recited in the claims. *See, e.g., in re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (“To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’”) (emphasis added); *accord.* MPEP 2112.

The McBride reference fails to remedy the deficiencies of Beeler. For example, while McBride may teach of a “local backup data storage location . . . [that] may be a hard drive in the host computer or in a computer networked to the host computer,” McBride fails to contain any disclosure, teaching, or suggestion of a locally-stored

image file located within the same partition as a file system to be backed up or restored, as is required by the claims of the present application. *See* Par. [0016].

The figures and text of McBride also clearly teach away from backing up or restoring a file system to or from a locally-stored image file located within the same partition as the file system. For example, as illustrated in FIG. 24 below, McBride explicitly teaches of backing up data from a first storage device (source 551) to a second backup storage device (destination 552) that is different from, and located within a different partition as, the first storage device. As seen in this figure, source 551 ("C:\My Documents") is located on a client's hard drive, while the destination 552 ("Web Drive") for the backup is located within an entirely different partition on an entirely different device and machine (web server).

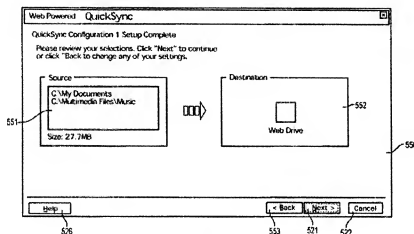


FIG. 24

b. Claims 1-10, 21-30, and 32-42: "Directory Map" Limitations

As explained in Applicant's Response dated 5 February 2008, Beeler and McBride clearly fail to disclose, teach, or suggest "a directory map . . . that associates copied allocation units in the locally-stored image file with names of corresponding files from the file system, as is recited in independent claims 1, 21, 41, and 42. For example, while Beeler may teach of copying "all of the volumes, directories, and files specified in [a] replication set" from a "source server 61 to [a] target server 93," this reference fails to explicitly teach of adding a directory map to a locally-stored image file, much less a locally-stored image that is "located within the same partition as the

file system being backed up,” as is recited in the present application. *See, e.g.,* par. [0091] of Beeler.

Even if, *arguendo*, Beeler taught of adding a directory map to a locally-stored image file, Beeler clearly fails to teach of a directory map that “associates copied allocation units in the locally-stored image file with names of corresponding files from the file system,” as is recited in independent claims 1, 21, 41, and 42. Quite simply, the Examiner has failed to point to any specific portion of Beeler that teaches, either explicitly or implicitly, of a directory map that associates copied allocation units in an image file with names of corresponding files in a file system. The Examiner has also failed to point to any portion of McBride that satisfies these limitations.

Accordingly, because Beeler and McBride, either alone or in combination, fail to disclose, teach or suggest each and every limitation of independent claims 1, 11, 21, 31, and 41-43, a *prima facie* case of obviousness has not been established. *See, e.g., In re Royka*, 490 F.2d 981, 985 (CCPA 1974) (holding that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art) (emphasis added); *accord.* MPEP § 2143.03 (“To establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations.”) (emphasis added). Applicant therefore respectfully requests withdrawal of this rejection.

Moreover, aside from the novel limitations recited therein, claims 2-10, 12-20, 22-30, and 32-40 are also allowable at least by virtue of their dependency upon allowable base claims 1 and 21. Applicant respectfully requests, therefore, the withdrawal of the rejection of claims 1-10, 21-30, and 32-42.

c. Claims 11-20, 31, and 43

Independent claims 11 and 43 each recite a method for restoring a file system comprising, *inter alia*, “access[ing] a locally-stored image file located within the partition to which the file system is to be restored.” Similarly, independent claim 31 recites an apparatus for restoring a file system comprising, *inter alia*, “an image locator to find a locally-stored image file located within the partition to which the file system is to be restored.” As detailed above in connection with 1-10, 21-30, and 32-42, Beeler

and McBride, either alone or in combination, fail to disclose, teach, or suggest accessing or restoring a locally-stored image file that is located within the partition to which the file system is to be restored, as is recited in claims.

Independent claims 11, 31, and 43 also recite, *inter alia*, a “locally-stored image file comprising a directory map” and “creat[ing] [or building] a new directory area for the partition using the directory map” of the locally-stored image. Beeler and McBride, in contrast, clearly fail to disclose, teach, or suggest these limitations. For example, as explained in Applicant’s Response dated 5 February 2008, while Beeler may teach of copying “all of the volumes, directories, and files specified in [a] replication set” from a “source server 61 to [a] target server 93,” this reference fails to explicitly teach of a locally-stored image file that comprises a directory map, much less a locally-stored image that is “located within the same partition as the file system being backed up,” as is recited in the present application. *See, e.g.*, par. [0091] of Beeler. Moreover, while Beeler arguably teaches of “creating a directory,” this reference clearly fails to disclose, teach, or suggest “creat[ing] [or building] a new directory area for the partition using [a] directory map” of the locally-stored image. The Examiner has failed to point to any portion of McBride that satisfies any of these limitations.

Accordingly, because Beeler and McBride, either alone or in combination, fail to disclose, teach or suggest each and every limitation of independent claims 1, 20, 31, and 43, a *prima facie* case of obviousness has not been established. Moreover, aside from the novel limitations recited therein, claims 12-20 are also allowable at least by virtue of their dependency upon allowable base claim 11. Applicant respectfully requests, therefore, that the rejection of claims 11-20, 31, and 43 under 35 U.S.C. § 103 be withdrawn.

Conclusion

For at least the foregoing reasons, Applicant submits that each of the presently pending claims in this application is in immediate condition for allowance.